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## Litigation Nation

By George F. Will  
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Called to a Florida school that could not cope, police led the disorderly student away in handcuffs, all 40 pounds of her 5-year-old self. In a Solomonic compromise, schools in Broward County, Fla., banned running at recess. Long Beach, N.J., removed signs warning swimmers about riptides, although the oblivious tides continued. The warning label on a five-inch fishing lure with a three-pronged hook says "Harmful if swallowed"; the label on a letter opener says "Safety goggle recommended."

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No official at the Florida school would put a restraining arm around the misbehaving child lest he or she be sued, as a young member of Teach for America was, for \$20 million (the school settled for \$90,000), because the teacher put a hand on the back of a turbulent seventh-grader to direct him to leave the classroom. Another teacher's career was ruined by accusations arising from her having positioned a child's fingers on a flute. A 2004 survey reported that 78 percent of middle and high school teachers have been subjected to legal threats from students bristling with rights. Students, sensing the anxiety that seizes schools when law intrudes into incidental relations, challenge teachers' authority.

Someone hurt while running at recess might sue the school district for inadequate supervision of the runner, as Broward County knows: It settled 189 playground lawsuits in five years. In Indiana, a boy did what boys do: He went down a slide headfirst -- and broke his femur. The school district was sued for inadequate supervision. Because of fears of such liabilities, playgrounds all over America have been stripped of the equipment that made them fun. So now in front of televisions and computer terminals sit millions of obese children, casualties of what attorney and author Philip Howard calls "a bubble wrap approach to child rearing" produced by the "cult of safety." Long Beach removed the warning signs because it is safer to say nothing: Reckless swimmers injured by the tides might sue, claiming that the signs were not sufficiently large or shrill or numerous, or something. Only a public outcry got the signs restored.

Defensive, and ludicrous, warning labels multiply because aggressiveness proliferates. Lawsuits express the theory that anyone should be able to sue to assert that *someone* is culpable for even an idiotic action by the plaintiff, such as swallowing a fishing lure.

A predictable byproduct of this theory is brazen cynicism, encouraged by what Howard calls trial lawyers "congregating at the intersection of human tragedy and human greed." So:

A volunteer for a Catholic charity in Milwaukee ran a red light and seriously injured another person. Because the volunteer did not have deep pockets, the injured person sued the archdiocese -- successfully, for \$17 million.

The thread connecting such lunacies is a fear permeating American life. It is, alas, a sensible fear arising

from America's increasingly perverse legal culture that is the subject of what surely will be 2009's most needed book on public affairs -- Howard's "Life Without Lawyers: Liberating Americans From Too Much Law."

A nation in which the proportion of lawyers in the workforce almost doubled between 1970 and 2000 has become ludicrously dense with laws. Now legal self-consciousness is stifling the exercise of judgment. Today's entitlement culture inculcates the idea that everyone is entitled to a life without danger, disappointment or aggravation. Any disagreement or annoyance can be aggressively "framed in the language of legal deprivation."

Law is essential to, but can stifle, freedom. Today, Howard writes, "Americans increasingly go through the day looking over their shoulders instead of where they want to go." The land of the free and the home of the brave has become "a legal minefield" through which we timidly tiptoe lest we trigger a legal claim. What should be routine daily choices and interactions are fraught with legal risk.

Time was, rights were defensive. They were to prevent government from doing things to you. Today, rights increasingly are offensive weapons wielded to inflict demands on other people, using state power for private aggrandizement. The multiplication of rights, each lacking limiting principles, multiplies nonnegotiable conflicts conducted with the inherent extremism of rights rhetoric, on the assumption, Howard says, "that society will somehow achieve equilibrium if it placates whomever is complaining."

But in such a society, dazed by what Howard calls "rule stupor" and victimized by litigious "victims," the incentives are for intensified complaining. Read Howard's book, and weep for the death of common sense.

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